

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LORY FABIAN,	)	
	)	
Plaintiff,	)	
	)	Cause No.: 4:12-CV-01112
vs.	)	
	)	
THE ST. LOUIS RAMS PARTNERSHIP,	)	
et al.,	)	
Defendants.	)	

**DEFENDANTS' MOTION IN LIMINE REGARDING FINANCIAL  
CONDITION, WEALTH AND/OR NET WORTH OF DEFENDANTS**

COME NOW Defendants (collectively the "Rams") by counsel and for their Motion in Limine Regarding Financial Condition, Wealth, and/or Net Worth of Defendants state as follows:

1. It is anticipated that Plaintiff or her counsel will make mention of the relative financial conditions of the parties, salaries paid to Rams coaches, players or executives, and/or the net worth or wealth of the Rams or its owners.
2. For the reasons set forth below, such evidence has no place in ADEA litigation and this Court should bar and preclude any such testimony or argument.

**MEMORANDUM IN SUPPORT OF MOTION IN LIMINE**

3. In her June 20, 2012 Complaint, Plaintiff alleged age discrimination in violation of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 263(A)(1) & (2) (**Count I**), sexual discrimination, harassment and hostile work environment (**Count II**) and retaliation (**Count III**) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., and common law battery (**Count IV**).

4. In this Court's January 21, 2014 Order (Doc. #66), summary judgment was granted in favor of Defendants as to **Counts II, III, and IV**. Accordingly, Plaintiff's only remaining claim is that of age discrimination under the ADEA (**Count I**).

5. Remedies available under the ADEA are governed by specific damage provisions of the Act, 29 U.S.C. § 626(b), (c). These sections indicate that enforcement is to be sought pursuant to sections 211(b), 216 (except for subsection (a)), and 217 of the Fair Labor Standards Act (FLSA) that are expressly incorporated into the ADEA. The pertinent provision of the FLSA, 29 U.S.C. § 216(b), provides that "Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages."

6. The ADEA does not provide for recovery of any element of damages not set out in 29 U.S.C. § 216 (b). *Vasquez v. Eastern Air Lines, Inc.*, 579 F.2d 107, 109 (1<sup>st</sup> Cir. 1978). Recoverable damages in ADEA cases are normally limited to lost wages and benefits. See 8<sup>th</sup> CIR. CIVIL JURY INSTR. § 6.71 comment (2013). The ADEA does not provide for an award of punitive damages.

7. To permit evidence of the wealth of a party litigant, except where position or wealth is necessarily involved in determining the damages sustained, is prejudicial error. See *Union Electric Light & Power Co. v. Snyder Estate Co.*, 65 F.2d 297, 303 (8<sup>th</sup> Cir. Mo. 1933), *Blankenship v. Rowntree*, 219 F.2d 597, 598 (10<sup>th</sup> Cir. Okla. 1955).

8. The financial condition, wealth and/or net worth of Defendants and their owners has no relevance to any issue in this case. Because even the mention of such matters before the jury would be highly prejudicial, it is appropriate that the Court enter an order in limine assuring

that no such prejudice occur. *Lovett ex rel. Lovett v. Union Pac. R.R.*, 201 F.3d 1074, 1081(8<sup>th</sup> Cir. Ark. 2000).

WHEREFORE, Defendants request that the Court enter its Order in Limine that Plaintiff's counsel make no mention (including in voir dire and opening statement), ask no questions, offer no evidence and instruct Plaintiff and his witnesses to not offer or give testimony relating to the financial condition, wealth or net worth of Defendants, their owners, executives or other employees, and for such further Orders as the Court deems proper under the circumstances.

SHER CORWIN WINTERS LLC

/s/Bradley A. Winters

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St. Louis Rams LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2014, the above and foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system or by hand and mailing upon the following:

**/s/ Bradley A. Winters**